



UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JEREMY ALLEN CROZIER,
#77906

Plaintiff,

vs.

CATHERINE CORTEZ MASTO, *et al.*,

Defendants.

3:10-cv-00371-HDM-RAM

ORDER

This is a prisoner civil rights action. The court now reviews the first amended complaint (docket #6).

I. Screening Standard

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). Pursuant to the Prisoner Litigation Reform Act (PLRA), federal courts must dismiss a prisoner's claims, "if the allegation of poverty is untrue," or if the action "is frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Nietzke v. Williams*, 490 U.S. 319, 325 (1989). The court may,

1 therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or
2 where the factual contentions are clearly baseless. *Id.* at 327. The critical inquiry is whether a
3 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. *See Jackson*
4 *v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989).

5 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
6 provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under
7 Section 1915(e)(2) when reviewing the adequacy of a complaint or amended complaint. Review under
8 Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*,
9 232 F.3d 719, 723 (9th Cir. 2000). A complaint must contain more than a “formulaic recitation of the
10 elements of a cause of action;” it must contain factual allegations sufficient to “raise a right to relief
11 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1965
12 (2007). “The pleading must contain something more...than...a statement of facts that merely creates a
13 suspicion [of] a legally cognizable right of action.” *Id.* In reviewing a complaint under this standard,
14 the court must accept as true the allegations of the complaint in question, *Hospital Bldg. Co. v. Rex*
15 *Hospital Trustees*, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to
16 plaintiff and resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

17 Allegations in a *pro se* complaint are held to less stringent standards than formal
18 pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S.
19 519, 520-21 (1972) (*per curiam*); *see also Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
20 Cir. 1990). All or part of a complaint filed by a prisoner may be dismissed *sua sponte*, however, if the
21 prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on legal
22 conclusions that are untenable (*e.g.* claims against defendants who are immune from suit or claims of
23 infringement of a legal interest which clearly does not exist), as well as claims based on fanciful factual
24 allegations (*e.g.* fantastic or delusional scenarios). *See Neitzke*, 490 U.S. at 327-28; *see also McKeever*
25 *v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

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1 To sustain an action under section 1983, a plaintiff must show (1) that the conduct
 2 complained of was committed by a person acting under color of state law; and (2) that the conduct
 3 deprived the plaintiff of a federal constitutional or statutory right.” *Hydrick v. Hunter*, 466 F.3d 676,
 4 689 (9th Cir. 2006).

5 **II. Instant Complaint**

6 Plaintiff, who is incarcerated at Ely State Prison (“ESP”), has sued the Nevada State
 7 Legislature, the following Nevada officials: governor James Gibbons, Attorney General Catherine
 8 Cortez-Masto, Secretary of State Ross Miller—all Board of Prison Commissioners, as well as Nevada
 9 Department of Corrections (“NDOC”) Director Howard Skolnik. While his allegations are somewhat
 10 unclear, plaintiff has called his complaint a “class action” and appears to claim that the length of time
 11 required to exhaust administrative remedies, and the lack of an “emergency” process, violates inmates’
 12 First and Fourteenth Amendment rights to access to the courts.

13 Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*, 518
 14 U.S. 343, 346 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977), *limited in part on other grounds by*
 15 *Lewis*, 518 U.S. at 354; *Ching v. Lewis*, 895 F.2d 608, 609 (9th Cir. 1990). This right “requires prison
 16 authorities to assist inmates in the preparation and filing of meaningful legal papers by providing
 17 prisoners with adequate law libraries or adequate assistance from persons trained in the law.” *Bounds*,
 18 430 U.S. at 828; *see also Madrid v. Gomez*, 190 F.3d 990, 995 (9th Cir. 1999). The right, however,
 19 “guarantees no particular methodology but rather the conferral of a capability – the capability of bringing
 20 contemplated challenges to sentences or conditions of confinement before the courts [It is this
 21 capability] rather than the capability of turning pages in a law library, that is the touchstone” of the right
 22 of access to the courts. *Lewis*, 518 U.S. at 356-57. Prison officials may select the best method to ensure
 23 that prisoners will have the capability to file suit. *See id.* at 356. Prisons “might replace libraries with
 24 some minimal access to legal advice and a system of court-provided forms . . . that asked the inmates
 25 to provide only the facts and not to attempt any legal analysis.” *Id.* at 352.

26 To establish a violation of the right of access to the courts, a prisoner must establish that

1 he or she has suffered an actual injury, a jurisdictional requirement that flows from the standing doctrine
2 and may not be waived. *See Lewis*, 518 U.S. at 349; *Madrid*, 190 F.3d at 996. An “actual injury” is
3 “actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing
4 deadline or to present a claim.” *Lewis*, 518 U.S. at 348 (citation and internal quotations omitted); *see*
5 *also Alvarez v. Hill*, 518 F.3d 1152, 1155 n.1 (9th Cir. 2008) (explaining that “[f]ailure to show that a
6 ‘non-frivolous legal claim ha[s] been frustrated’ is fatal” to a claim for denial of access to legal
7 materials) (citing *Lewis*, 518 U.S. at 353 & n.4); *Madrid*, 190 F.3d at 996. Delays in providing legal
8 materials or assistance that result in actual injury are “not of constitutional significance” if “they are the
9 product of prison regulations reasonably related to legitimate penological interests.” *Lewis*, 518 U.S.
10 at 362. The right of access to the courts is limited to non-frivolous direct criminal appeals, *habeas*
11 *corpus* proceedings, and § 1983 actions. *See Lewis*, 518 U.S. at 353 n.3 & 354-55; *Simmons v.*
12 *Sacramento County Superior Court*, 318 F.3d 1156, 1159-60 (9th Cir. 2003) (explaining that “a prisoner
13 has no constitutional right of access to the courts to litigate an unrelated civil claim.”); *Madrid*, 190 F.3d
14 at 995.

15 Plaintiff’s complaint suffers from various defects. First, plaintiff has styled his complaint
16 as a class action, and he attempts to advance claims on behalf of himself as well as all inmates in the
17 state of Nevada. While *pro se* litigants have the right to plead and conduct their own cases personally,
18 *see* 28 U.S.C. § 1654, they have no authority to represent anyone other than themselves. *See Cato v.*
19 *United States*, 70 F.3d 1103, 1105 n.1 (9th Cir. 1995); *C.E. Pope Equity Trust v. United States*, 818 F.2d
20 696, 697 (9th Cir. 1987); *Church of the New Testament v. United States*, 783 F.2d 771, 773 (9th Cir.
21 1986). Yet plaintiff sets forth no facts whatsoever demonstrating how he personally was deprived of
22 his constitutional rights. *Hydrick*, 466 F.3d at 489.

23 Further, while plaintiff sets forth general allegations about what “all inmates” are
24 subjected to or denied, he utterly fails to identify what specific actions each of the defendants took and
25 how each defendant allegedly violated his (specific) constitutional rights. Plaintiff must set forth facts
26 alleging an actual connection or link between the actions of the defendants and the deprivation he

1 allegedly suffered. *See Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*,
2 423 U.S. 362 (1976). Accordingly, this complaint must be dismissed. However, because plaintiff's
3 allegations may implicate his right to access to the courts, he may amend his complaint.

4 The court cautions plaintiff that even when a constitutional violation occurs, law
5 enforcement officers nonetheless are entitled to qualified immunity if they act reasonably under the
6 circumstances. *KRL v. Estate of Moore*, 512 F.3d 1184, 1186 (9th Cir. 2008). A qualified immunity
7 analysis begins with a threshold question of whether, based upon the facts taken in the light most
8 favorable to the party asserting the injury, a official's conduct violated a constitutional right. *Saucier*
9 *v. Katz*, 533 U.S. 194, 201 (2001). If no constitutional right was violated, the court need not inquire
10 further. If, however, a constitutional violation occurred, the court's second inquiry is to ask whether the
11 law was "clearly established." *Id.* This is a question of law for the court. *Sinaloa Lake Owners Ass'n*
12 *v. City of Simi Valley*, 70 F.3d 1095, 1099 (9th Cir. 1995).

13 **III. Conclusion**

14 Plaintiff has leave to file an amended complaint in conformance with this Order. If
15 plaintiff elects to file an amended complaint, he is advised that he should specifically identify each
16 defendant to the best of his ability, clarify what constitutional right of the plaintiff's he believes each
17 defendant has violated and support each claim with factual allegations about each defendant's actions.
18 Again, there can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
19 connection between a defendant's actions and the claimed deprivation. *Rizzo*, 423 U.S. 362; *May v.*
20 *Enomoto*, 633 F.2d 164, 167 (9th Cir. 1980); *Johnson*, 588 F.2d at 743. Plaintiff's claims must be set
21 forth in short and plain terms, simply, concisely and directly. *See Swierkeiewicz v. Sorema N.A.*, 534
22 U.S. 506, 514 (2002); Fed. R. Civ. P. 8.

23 Plaintiff is informed that the court cannot refer to a prior pleading in order to make
24 plaintiff's amended complaint complete. Local Rule 15-1 requires that an amended complaint be
25 complete in itself without reference to any prior pleading. This is because, as a general rule, an amended
26 complaint supersedes the original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once

1 plaintiff files an amended complaint, the original pleading no longer serves any function in the case.
2 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each
3 defendant must be sufficiently alleged.

4 **IT IS THEREFORE ORDERED** that plaintiff's first amended complaint (docket #6)
5 is **DISMISSED WITH LEAVE TO AMEND**.

6 **IT IS FURTHER ORDERED** that plaintiff will have **thirty (30) days** from the date that
7 this Order is entered to file his amended complaint, if he believes he can correct the noted deficiencies.
8 The amended complaint must be a complete document in and of itself, and will supersede the original
9 complaint in its entirety. Any allegations, parties, or requests for relief from prior papers that are not
10 carried forward in the amended complaint will no longer be before the court.

11 **IT IS FURTHER ORDERED** that plaintiff shall clearly title the amended complaint
12 as such by placing the words "SECOND AMENDED" immediately above "Civil Rights Complaint
13 Pursuant to 42 U.S.C. § 1983" on page 1 in the caption, and plaintiff shall place the case number, **3:10-**
14 **CV-00371-HDM-RAM**, above the words "SECOND AMENDED" in the space for "Case No."

15 **IT IS FURTHER ORDERED** that plaintiff is expressly cautioned that if he does not
16 timely file an amended complaint in compliance with this order, this case may be immediately
17 dismissed.

18 **IT IS FURTHER ORDERED** that the Clerk shall send to plaintiff a blank section 1983
19 civil rights complaint form with instructions along with one copy of the first amended complaint.

20 **IT IS FURTHER ORDERED** that plaintiff's motion for leave to file extra pages (docket
21 #5) is **GRANTED**.

22 DATED: November 16, 2010.

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26 UNITED STATES MAGISTRATE JUDGE